



ASIL STUDIES IN INTERNATIONAL LEGAL THEORY

# Customary International Law

A New Theory  
with Practical Applications

Brian D. Lepard

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# Customary International Law Asil Studies In International Legal Theory

**Anne van Aaken, Moshe Hirsch**



## **Customary International Law Asil Studies In International Legal Theory:**

Customary International Law Brian D. Lepard, 2010-01-11 Customary international law although long recognized as a primary source of international law remains replete with enigmas both conceptual and practical These include how to determine the existence of *opinio juris* the function of the state practice requirement the definition of *jus cogens* customary norms and the relationship between customary international law and ethics In part because of these enigmas the subject has generated a wide ranging literature However no recent book length work has attempted to articulate a comprehensive theory of customary international law that can effectively resolve these questions This book sets out to accomplish this goal Its approach is unique in a number of ways For example it is multidisciplinary and draws insights from fields such as legal theory philosophy political science and game theory In addition it is anchored in a sophisticated ethical framework and explores at length the interconnections between customary international law and ethics Customary International Law

Brian D. Lepard, 2010-01-11 This book sets out to articulate a comprehensive theory of customary international law that can effectively resolve the conceptual and practical enigmas surrounding it It takes a multidisciplinary approach and draws insights from international law legal theory political science and game theory It is anchored in a sophisticated ethical framework and explores the interrelationships between customary international law and ethics **Reexamining**

**Customary International Law** Brian D. Lepard, 2017-02-16 Reexamining Customary International Law takes on the complex issues and controversies surrounding the history theory and practice of customary international law as it reexamines customary law s increasingly important role in world affairs It incorporates the expertise of distinguished authors to probe many difficult issues that remain unresolved concerning the doctrine of customary law At the same time this book engages in a profound exploration of the practical role of customary international law in a variety of important fields including humanitarian law human rights law and air and space law *International Legal Theory and the Cognitive Turn* Anne van Aaken, Moshe Hirsch, 2025-04-02 Cognitive and behavioural studies are making inroads into international law international policy and literature Firstly international practice is drawing increasingly on behavioural studies The United Nations UN and its agencies have turned to behavioural science to confront new challenges faced by the international community including the Sustainable Development Goals climate change and gender equality Similarly the World Bank and World Health Organization have created teams of experts to advise on the incorporation of behavioural insights to support their operations Other international organizations are likewise following suit Secondly the cognitive behavioural turn is generating innovative research work in disciplines neighbouring international law and is gaining similar traction in international legal scholarship Yet despite this the implications of cognitive behavioural studies for international legal theory remain under explored With few exceptions international legal theories have long failed to explicitly address the cognitive behavioural assumptions of their respective theoretical approaches To fill this gap this book systematically examines the impact of the cognitive

behavioural turn on the main theoretical schools within international legal scholarship Across thirteen chapters the contributors uncover the cognitive bases of their respective theories exploring both the cognitive similarities underlying the assumptions of different theories of international law as well as the limitations of the use of behavioural science in international law theories International Legal Theory and the Cognitive Turn makes explicit the relationship between cognitive behavioral methodologies and other ways of thinking about international law including TWAIL feminist and legal realist approaches and more This is an open access title available under the terms of a CC BY NC ND 4 0 International licence It is free to read on Oxford Scholarship Online and offered as a free PDF download from OUP and selected open access locations

**The Sources of International Law** Hugh Thirlway, 2019-03-21 This new edition of Hugh Thirlway's authoritative text provides an introduction to one of the fundamental questions of the discipline what is and what is not a source of international law Traditionally treaties between states and state practice were seen as the primary means with which to create international law However more recent developments have recognized customary international law alongside international treaties and instruments as a key foundation upon which international law is built This book provides an insightful inquiry into all the recognized or asserted sources of international law It investigates the impact of ethical principles on the creation of international law whether soft law norms come into being through the same sources as binding international law and whether jus cogens norms and those involving rights and obligations erga omnes have a unique place in the creation of international legal norms It studies the notion of general principles of international law within international law's sub disciplines and the evolving relationship between treaty based law and customary international law Re examining the traditional model it investigates the increasing role of international jurisprudence and looks at the nature of international organisations and non state actors as potential new sources of international law This revised and updated book provides a perfect introduction to the law of sources as well as innovative perspectives on new developments making it essential reading for anyone studying or working in international law

**The Future of International Law** Joel P. Trachtman, 2013-02-25 Draws together the theoretical and practical aspects of international cooperation needs and legal responses in critical areas of international concern

**Normative Pluralism and International Law** Jan Klabbers, Touko Piiparinen, 2013-04-22 This book addresses conflicts involving how law relates normative orders The assumption behind the book is that law no longer automatically claims supremacy but that actors can pick and choose which code to follow The book covers conflicts between legal orders and conflicts involving law and honor self regulation lex mercatoria local social practices bureaucracy religion professional standards and morality

**International Law as Behavior** Harlan Grant Cohen, Timothy Meyer, 2021-04-01 This volume includes chapters from an exciting group of scholars at the cutting edge of their fields to present a multi disciplinary look at how international law shapes behavior Contributors present overviews of the progress established fields have made in analyzing questions of interest as well as speculations on the questions or insights that emerging methods

might raise In some chapters there is a focus on how a particular method might raise or help answer questions while others focus on a particular international law topic by drawing from a variety of fields through a multi method approach to highlight how these fields may come together in a single project Still others use behavioral insights as a form of critique to highlight the blind spots and related mistakes in more traditional analyses of the law Throughout this volume authors present creative insightful challenges to traditional international law scholarship

**The Role of Ethics in International Law** Donald Earl Childress, III, 2011-11-14 The purpose of this book is to explore what role ethical discourse plays in public and private international law The book seeks 1 to delineate the role of ethical investigation in creating sustaining challenging and changing international law and 2 to open up a conversation between two related disciplines public and private international law that frequently labor in different vineyards By examining the role of ethical discourse in international law s public and private dimensions this volume will hopefully open new avenues for cross disciplinary exchange in these important fields and related disciplines The chapters in this book show that there is a way to engage the ethical dimension of international law without seeking to use ethics as raw politics and the will to power

**Theoretical Boundaries of Armed Conflict and Human Rights** Jens David Ohlin, 2016-08-04 A theoretical examination of the tense and uncertain relationship between the laws of war and human rights law

**The Global Prosecution of Core Crimes under International Law** Christopher Soler, 2019-09-18 This book deals with the prosecution of core crimes and constitutes the first comprehensive analysis of the horizontal and vertical systems of enforcement of international criminal law and of their inter relationship It provides a global jurisprudential exposition in assessing the grounds for refusal of surrender to the International Criminal Court and of extradition to another State It also offers insights into legal perspectives which improve the prevailing enforcement regimes of various models of criminal justice including hybrid criminal tribunals special criminal courts judicial panels and partnerships and other budding sui generis judicial and or prosecutorial institutions The book espouses a human rights law oriented critique to the enforcement of domestic regional and international criminal justice and is aimed at legal practitioners prosecutors defence lawyers magistrates and judges jurists criminal justice experts penologists legal researchers human rights activists and law students Christopher Soler lectures Maltese criminal law international criminal law and public international law at the University of Malta He obtained his Ph D from the University of Amsterdam in The Netherlands

**Incorporating Indigenous Rights in the International Regime on Biodiversity Protection** Federica Cittadino, 2019-08-12 In Incorporating Indigenous Rights in the International Regime on Biodiversity Protection Federica Cittadino convincingly interprets the Convention on Biological Diversity CBD and its related instruments in light of indigenous rights and the principle of self determination Cittadino s harmonisation of these formally separated regimes serves at least two main purposes First it ensures respect for the human rights framework that protects indigenous rights whilst implementing the biodiversity regime Second harmonisation allows for the full operationalisation of the indigenous

related provisions of the CBD framework that concern traditional knowledge genetic resources and protected areas Federica Cittadino successfully demonstrates that the CBD may allow for the protection of indigenous rights in ways that are more advanced than under current human rights law Contemporary issues in international law by Kenneth Mwenda 2021 Kenneth Mwenda,2021-01-01 About the publication Whether International Law is really law is one of those vexed questions that still linger Prof Mwenda s three pillar approach to looking at International Law is an exceedingly useful conceptual framework which is at the same time emblematic of the malleable nature of the discipline The analysis demonstrates when States pay attention to international law why they feel compelled to do so when they choose not to and why all that matters This is an extremely timely and accessible book which should be useful to the legal academy and to practitioners DR VICTOR B MOSOTI Chief Counsel for Environmental and International Law Legal Vice Presidency The World Bank Prof Mwenda s book Contemporary Issues in International Law is a must read masterpiece on international law for practitioners academics and students of public international law It is a thought provoking book that touches on contemporary issues confronting international law at a time when multilateralism is under serious threat It touches on issues that need to be discussed and addressed in order to be able to deal with the emerging challenges of rising nationalism among leading nations of the world BRIAN CHIGAWA ESQ Director of Legal and Corporate Affairs Common Market for Eastern and Southern Africa COMESA

**Morality, Jus Post Bellum, and International Law** Larry May,Andrew Forcehimes,2012-04-23 This collection of essays brings together some of the leading legal political and moral theorists to discuss the normative issues that arise when war concludes and when a society strives to regain peace In the transition from war mass atrocity or a repressive regime how should we regard the idea of democracy and human rights Should regimes be toppled unless they are democratic or is it sufficient that these regimes are less repressive than before Are there moral reasons for thinking that soldiers should be relieved of responsibility so as to advance the goal of peace building And how should we regard the often conflicting goals of telling the truth about what occurred in the past and allowing individuals to have their day in court These questions and more are analyzed in detail It also explores whether jus post bellum itself should be a distinct field of inquiry Negotiating State and Non-State Law Michael A. Helfand,2015-07-02 Non state law is playing an increasing role in both public and private ordering Numerous organizations have emerged alongside the nation state each purporting to provide their members with rules and norms to govern their conduct and organize their affairs The nation state increasingly finds itself sandwiched between two broad and contrasting categories of non state law The first law above the state captures legal systems that function across the territorial borders of nation states The second category law below the state includes forms of local customary religious and indigenous law As these forms of non state law persist and proliferate alongside the nation state the relationship between state and non state law becomes more complex multifaceted and tense This volume addresses this relationship considering whether and to what extent state and non state law can coexist and how each form of law seeks to

influence as well as transform the other      *Human Rights in Emergencies* Evan J. Criddle, 2016-07-21 This book examines current debates about how international human rights law regulates national authorities and international institutions during emergencies      *International Law and Governance of Natural Resources in Conflict and Post-Conflict Situations* Daniëlla Dam-de Jong, 2015-06-26 Natural resource wealth is conducive to a country's development. Nevertheless, the last few decades have shown a harsher reality where natural resources have also triggered, financed or fuelled a number of internal armed conflicts. Examples include the armed conflicts in Cambodia, Sierra Leone, Liberia and the Democratic Republic of the Congo, which have been financed with the exploitation of a variety of valuable natural resources including diamonds, gold, timber, oil and cocoa. The aim of this book is to assess the contribution of international law in ensuring that natural resources are used to promote development and to achieve sustainable peace instead of financing armed conflict. For this purpose, the author discusses the international legal framework for the governance of natural resources in States in general, in situations of armed conflict and as part of conflict resolution and post-conflict peacebuilding efforts.

**Tipping Points in International Law** Jean d'Aspremont, John Haskell, 2021-10-28 Addressing some of the most perilous controversial issues in international law and governance, this volume brings together legal scholars from diverse geographic, personal and scholarly perspectives. They reflect on the pervasive feeling of crisis in the world today and share their views on the possibilities and limits of the international legal architecture and its expert communities in shaping the world of tomorrow. What exactly is this feeling that the contemporary international legal architecture is at a tipping point? What do these possible risks expose about the fragility and limits of our current conceptual and institutional order? What commitments drive our hopes and anxieties? Authors explore these questions across a wide range of possible tipping points and offer readers a unique snapshot of the lived experience of what it means to be an expert engaged right now in international law and governance. Each chapter covers both theory and practice in analysing a current problem.

*International Law in the Transition to Peace* Carina Lamont, 2021-11-14 This book proposes a normative framework specifically designed for the complex and legally uncertain time period between armed conflicts and peace. As such, it contributes both to the furthering of a *jus post bellum* framework and to enhanced legal clarity in complex and legally uncertain environments. This in turn contributes to strengthened protection engagements and thus to improved prospects of enabling sustainable peace and security in both national and international perspectives. The book offers a novel but persuasive argument for a legal framework specific for transitional environments. Such legal framework, it is argued, is warranted in order to enable legal clarity to contemporary and outstanding legal issues as well as to furthering peace efforts in complex environments. The legal framework suggested proposes a dividing line between applicable legal frameworks that it is submitted enhances both legal clarity on protection engagements and the quest for sustainable peace. The framework proposed is founded on a legal analysis of the protective nature and function of law. It thus provides a rare but important perspective on law that is of value in the quest for sustainable peace and security. The research draws uniquely

on both contemporary legal debates and on peace and conflict research It does so in order to enable legal analysis that is both legally sound as well as appropriate and adequate in today s peace and security realities The book provides a valuable resource for academics researchers and policy makers in the areas of Public International Law International Humanitarian Law International Human Rights Law the law of Peace Operations and Peace and Security Studies     **Jus Post Bellum and Transitional Justice** Larry May,Elizabeth Edenberg,2013-10-07 This collection of essays explores the legal and moral questions that arise at the end of war and in the transition to less oppressive regimes



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